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WM. B. STANBURY

No. 363

**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners,

vs.

ANNA F. C. MARTIN ET ALS., Respondents,

BRIEF OF PETITIONERS

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STATEMENT OF THE PLEADINGS

MAY IT PLEASE THE COURT:

On the 12th day of October, 1922, the petitioners filed their bills of complaint in the District Court of the United Staes, praying for the cancellation of outstanding deeds and record evidences of title as clouds upon their title and praying that they be decreed the sole and only, true, legal equitable owners of

the land therein described. The bills of complaint alleged that petitioners' title came from the United States government under Act of September 28, 1850, known as the Swamp and Overflowed Land Act to the State of Mississippi, and patent from the State of Mississippi dated June 27, 1871, to the Pearl River Improvement and Navigation Comany, and by mesne conveyance therefrom to petitioners. The bills further alleged that the State of Mississippi issued a junior patent on December 7, 1883, to Mose Mitchell, and that thereafter Mose Mitchell executed a deed purporting to convey said lands, and by instrument subsequently executed, the pretended title of Mose Mitchell passed to respondents. It was to cancel this junior patent and the conveyances thereunder that the bills in equity were filed in the District Court.

Petitioners in their bills deraigned their title from the United States to the State of Mississippi by Act of September 28, 1850; from the State of Mississippi to the Pearl River Improvement and Navigation Company by patent dated June 27, 1871, authorized by Act of the Legislature of April 7, 1871; that the Pearl River Improvement and Navigation Company, on November 20, 1872, for a valuable consideration conveyed the said lands to M. S. Baldwin; that on the 17th day of April, 1873, M. S. Baldwin conveyed to Israel Hall; that on April 30, 1889, Israel Hall died, leaving a last will and testament, in which he devised the said lands to his wife, Olivia B. Hall. That on the 23rd of July, 1900, Olivia B. Hall conveyed the said lands to Charlotte H. Eastman; that on July 5, 1905, Charlotte H. Eastman conveyed to the Wyatt Lumber Company; that on January 1, 1918, the Wyatt Lumber Company conveyed to the complainants in the court below.

There were four original bills filed in the District Court against four separate defendants for the different lands described in the said bills of complaint. The chain of title to complainants as to each separate tract of land was the same, and the chain of title through which the

defendant claimed, was identical down to the deed under which each separate defendant held, the grantor in each deed to the defendants being the same.

The defendants filed their separate answers, in which they denied that the complinants were the owners of the said land, and set up title in themselves.

When the causes came on for a hearing, the four cases were consolidated and tried on an agreed statement of facts. The District Court denied the relief prayed for, and decreed that the defendants were the owners of the lands. The District Court based its decree on the authority of the decisions of the Supreme Court of the State of Mississippi, overruling the decisions of the Circuit Court of Appeals, which had formerly adjudicated the validity of the said Pearl River Improvement and Navigation Company's patent.

STATEMENT OF FACTS

The case was tried on an agreed statement of facts. The material facts agreed on are these: First, That the complainants derived their title by mesne conveyances from the Pearl River Improvement and Navigation Company, and whatever title that company had under and by virtue of its patent passed to and was held by complainants. It was further agreed that the introduction of evidence by the complainants of the chain of title from the Pearl River Improvement and Navigation Company to complainants was waived. It was further agreed that the patent to the Pearl River Improvement and Navigation Co., is the same patent, which was involved in the case of Southern Pine Company vs. Hall, reported in 105 **Federal Reporter**, P. 84, and the case of Becker vs. Columbia Bank, 73 **Southern Reporter**, P. 798, but that the lands embraced in the four suits were not involved in either of said suits. The patent from the State to the

Pearl River Improvement and Navigation Company was introduced by agreement.

By the agreement it is admitted that patent under consideration is the same patent considered in Southern Pine Company vs. Hall. The deraignment of title shows that the Pearl River Improvement and Navigation Company parted with the title to this land for a valuable consideration on November 20, 1872. It will further appear by reference to the Hall case, *supra*, and the deraignment of title, that Olivia B. Hall owned the land at the time the Hall case was decided by the Circuit Court of Appeals. The bill of complaint charges that she owned it, and that it was by inadvertence that the lands were omitted from the bill of complaint in that suit.

The Circuit Court of Appeals thus stated the facts of the case, upon which they based their opinion:

"The appellants as complainants below filed four bills separately on the chancery side of the Court against the individual defendants, describing pieces of property as follows: Anna F. C. Martin, the NE $\frac{1}{4}$ of SE $\frac{1}{4}$; F. C. Martin, SE $\frac{1}{4}$ of SE $\frac{1}{4}$; H. P. Lewis, SW $\frac{1}{4}$ of NW $\frac{1}{4}$; and George Lawrence SE $\frac{1}{4}$ of NW $\frac{1}{4}$; all in Section 36, Twp. 2, South, of Range 15 West; praying in each bill to have the Court decree title in them and remove any claim of the defendants as a cloud upon their title. Each defendant answered the bill denying complainants' title on various grounds and alleging title in himself or herself.

"These suits were subsequently consolidated and tried before the District Judge as one suit, upon the agreed statement of facts and documentary evidence, and a decree rendered whereby it was adjudged that the

title to the lands was vested in the defendants and the prayers of the bills denied.

"The agreed statement of facts among ~~other things stipulated that the lands in question~~ were acquired by the State of Mississippi from the United States by Act of Congress approved September 28th 1850; that whatever title complainants have depends upon the patent issued to the Pearl River Improvement and Navigation Company, by the State of Mississippi, June 27th, 1871, and vested in the complainants by mesne conveyances, the production of which is waived; that complainants acquired their title January 1st, 1918; that whatever title defendants have was acquired through the patent issued by the State of Mississippi, December 7th, 1883, to Mose Mitchell, through mesne conveyances, the production of which is waived.

"That the taxes on the land were paid by the predecessors in title of the defendants for the years 1892, 1903 and 1905; that complainants or their predecessors in title paid the taxes for the remaining years from 1890 to 1922 inclusive, and that the parties do not know who paid such taxes prior to 1890.

"It is further admitted that the patent to the Pearl River Improvement and Navigation Company, under which complainants claim is the same patent involved in the cases of Southern Pine Co., vs. Hall, 105 Fed. 84, and Becker vs. Columbia Bank, 73 So. 798, but these particular lands were not involved in these suits; that there was a bond filed in the office of the Secretary of State purporting to be the bond required by the Act of April 8th, 1871 of the Legislature of the State of

Mississippi, which bond is set out in words in the cases of Hardy vs. Hartman, 65 Miss. 505; Southern Pine Co. vs. Hall, and Becker vs. Columbia Bank, *supra*.

"Pursuant to this agreed statement of facts, a copy of the patent to the Pearl River Improvement and Navigation Company and a copy of the patent to Mose Mitchell were introduced and filed in evidence.

"The District Judge in the trial and disposition of the cases followed the decisions of the Supreme Court of Mississippi in the construction of the Act of the Mississippi Legislature of 1871, rather than the decision of the Circuit Court of Appeals in Southern Pine Co. vs. Hall, *supra*.

"In the case of Hardy vs. Hartman 65 Miss. 505, the Supreme Court of Mississippi in 1888 decided that the giving the bond required by Section 5 of the Act of 1871 incorporating the Pearl River Improvement and Navigation Company, was a condition precedent to the issuance of the patent provided for in said Act; that this condition precedent had not been complied with before the patent, the basis of complainants' title, was issued to the company and therefore such patent was void and did not divest the title of the State.

"The bond referred to in the agreed statement of facts is set out in the statement of the above case, and is as follows:

BOND.

Pearl River Improvement and Navigation Company.

"Know all men by these presents, that we, Walter P. Billings, Samuel A. Vose, A. Warner, O. C. French, are held and firmly bound unto the State of Mississippi in the sum of Fifty Thousand Dollars, the payment of which well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, by these presents. The condition of the above bond is such, that whereas by an Act of the Legislature of the State of Mississippi, entitled, 'An Act to incorporate the Pearl River Improvement and Navigation Company, and for other purposes,' a company was incorporated called the Pearl River Improvement and Navigation Company, which company is charged with certain duties and bound by certain conditions in said Act specified. Now, if said company will well and truly perform, or cause to be performed, all the acts and things mentioned in said act of incorporation, and comply with all the terms and conditions in accordance with the tenor and meaning of said act, then this bond to be void, otherwise to remain in full force and effect.

"In witness whereof said persons have hereunto set their hands and seals this 7th day of April, 1871.

"W. P. Billings (Seal)
(by S. A. Vose, His attorney)
S. A. Vose, (Seal)
A. Warner (Seal)
O. C. French (Seal)
"Approved May 12th, 1871.
J. L. ALCORN, Governor."

"The question of the validity of the patent to the Pearl River Improvement and Navi-

gation Company, was again before that Court in *Becker vs. Columbia Bank*, 73 So. 798, when the Court again held the patent void and declared the former decision to be a rule of property in the State. Since the decision of this case, two other cases have been before the Supreme Court of Mississippi. In these cases the Court reversed the case awarding damages to the State and affirmed the chancery decree dismissing the bill. On suggestion of error seeking to have the Court declare that the distinction drawn in that opinion between that case and *Tynes vs. Southern Pine Company*, unsound, they say: 'We are not concerned here with the correctness of the decision in *Hardy vs. Hartman* and the rule there applied, whether correct or not to titles derived through the patent issued to the Pearl River Improvement and Navigation Company, has become a rule of property and will not be departed from.'

"In the case of *Southern Pine Co. vs. Hall* 105 Fed. 84, the Circuit Court of Appeals reached the conclusion that the bond was a compliance with the statute and the patent issued to the Pearl River Improvement and Navigation Company was valid. The Supreme Court of the United States refused a certiorari in this case.

"We have therefore the question whether the rule of title to real property as decided by the Supreme Court of the State of Mississippi should be applied in this case as was done by the District Judge. We think that is the proper rule, and that there is no error in the decree. There cannot be two contradictory rules of titles to real property dependent upon the statutes of a state. The

construction of such statutes by the highest Court of the State is binding upon the courts of the United States in cases not falling within some narrow exceptions."

The Circuit Court of Appeals refused to follow its own decision in the case of Southern Pine Company vs. Hall. It overruled that case and followed Hardy vs. Hartman, 65 Mississippi 505, and Becker vs. the Columbia Bank, *supra*. The Circuit Court of Appeals affirmed the decree of the District Court.

ARGUMENT

COMPLAINANTS' TITLE IS A GOOD AND VALID TITLE. HARDY VS. HARTMAN AND BECKER VS. COLUMBIA BANK ARE NOT APPLICABLE TO THE CASE AT BAR.

The State of Mississippi patented the lands involved here to the Pearl River Improvement and Navigation Company under and by virtue of the Act of April 8, 1871. A copy of the said Act is filed as Appendix "B" to the petition and brief for writ of certiorari. The patent issued on June 27, 1871, is regular in form and was duly recorded. On November 20, 1872, the Pearl River Improvement and Navigation Company, for a valuable consideration, sold the lands here in question to Baldwin. Baldwin, on April 17, 1873, for a valuable consideration, sold and conveyed the said lands to Israel Hall. On April 19, 1873, Israel Hall was the owner of the said lands by mesne conveyances from the Pearl River Improvement and Navigation Company.

The Legislature of the State of Mississippi enacted Chapter 114 of the Acts of 1873, which act became a law on April 19, 1873. The State by this act legalized, ratified and confirmed the deeds previously made by the Pearl River Improvement and Navigation Company to land which had passed to it under the Acts of April 8, 1871. A

copy of Chapter 114 of the Laws of 1873 is exhibited as Appendix "C" to the petition and brief for the writ of certiorari.

Section 1, Chapter 114 of the laws of 1873, provided that the Pearl River Improvement and Navigation Company should pay into the state treasury on or before the first day of October, 1873, twenty-five cents per acre for the land which had been patented to said company. It further provided that upon the payment of twenty-five cents per acre, patent should issue for all the lands embraced in the grant and not previously patented. By Section 4 of the said act, it provided that if said payments, as referred to in the first section, are not made, then all the right, title and interest of the company reverted to the State, and by the provision of the act, should rest absolute in the State. Section 5 provided for the surrender of the patents to the Secretary of the State to be redelivered to the company upon its compliance with the provisions of the act in paying the twenty-five cents per acre.

The Pearl River Improvement and Navigation Company, at the time of the enactment of Chapter 114 of the Laws of 1873, had sold and conveyed part of the lands previously patented to it. The lands embraced in this suit had been sold by said company and deed executed therefor to Baldwin. By Section 6 of the said act, the Legislature protected the purchasers of these lands by legalizing, ratifying and confirming the deeds made by the Pearl River Improvement and Navigation Company.

In *Hardy vs. Hartman*, decided May 31, 1888, Hardy claimed title to the lands there involved under the Act of 1871, granting the lands to the Pearl River Improvement and Navigation Company and a tax sale thereafter in which the said lands were sold to the State of Mississippi and a purchase by him of the said tax title from the State. Hartman's title rested upon a subsequent patent from the State of Mississippi to him.

The lands embraced in the Hartman case were never sold by the Pearl River Improvement and Navigation Company. The legal and logical conclusion to be deduced is that the twenty-five cents per acre was never paid by the Pearl River Improvement and Navigation Company; that the Secretary of the State never redelivered the patents to the said company. The lands were abandoned by the said company, and subsequent thereto were sold for taxes.

Under Chapter 114 of the Acts of 1873, the lands donated to the Pearl River Improvement and Navigation Company by the Act of 1871 were divided into two classes and dealt with as such. The first class of lands dealt with were those lands granted to the Pearl River Improvement and Navigation Company, which had not been alienated by it. The second class were those lands donated by the said Pearl River Improvement and Navigation Company, and which the said company sold and conveyed prior to the passage of said act.

In the Hartman case, the Supreme Court of the State of Mississippi was dealing with those lands coming within the first classification of the act. No patent was shown to have issued to the Pearl River Improvement and Navigation Company, and in the absence of a patent, no title passed under Chapter 114 of the Acts of 1873. It is true that no reference is made to the laws of 1873, in the opinion of the Court in the Hartman case. But the reason for the result can be justified under this law.

In the case of Becker vs. Columbia Bank, *supra*, the title to the land under consideration was identical with that in the Hartman case. Both cases were passing upon those lands, embraced within the grant to the Pearl River Improvement and Navigation Company and never alienated by that company.

The lands involved in this suit came within the second class of lands dealt with in the Acts of 1873. The sale of

the Pearl River Improvement and Navigation Company was specifically ratified and confirmed by Section 6 of the act. Whatever defects or invalidities that might have attached to the original patent were cured by this legislative ratification.

Southern Pine Company vs. Hall, *supra*, was dealing with the lands embraced in the second class and identical in title with the lands here under consideration. The Hall case is the only case in any court that has ever passed upon the title to lands situated and classified as are these lands. The Hall case is controlling on the point presented in the case at bar.

THE FEDERAL COURT EXERCISED ITS INDEPENDENT JUDGMENT IN CONSTRUING THE BOND IN THE HALL CASE, AND IS NOT NOW REQUIRED TO ABANDON ITS FORMER OPINION AND FOLLOW THE STATE COURT.

It is a well settled rule of law that the federal courts follow the decisions of the State court in construing a constitution or statute of the State, or decisions of the State court, which have become rules of property.

Jackson vs. Chew, 12 Wheat 153; and the line of decisions following this rule.

There is an equally well settled rule, that as to questions of general and commercial law, and where property rights have vested before the decisions of the State courts are rendered, that the federal courts exercise their independent judgment.

Burgess vs. Seligman, 107 U. S. 20; and the line of cases following it.

In the case of Hardy vs. Hartman, the Supreme Court of Mississippi considered the instrument filed, pur-

porting to be the bond required by the statute donating the lands to the Pearl River Improvement and Navigation Company. The construction of the instrument required a consideration of the general and commercial law in the construction of contractual obligations. The State Court held that that instrument was not the bond of the Pearl River Improvement and Navigation Company. When the Circuit Court of Appeals came to consider the same question in the Hall case, it refused to follow the case of Hardy vs. Hartman. The Circuit Court of Appeals exercised its independent judgment in passing upon the instrument purporting to be a bond, and in protecting the rights that had accrued prior to the decision of Hardy vs. Hartman. The Circuit Court of Appeals held that the patent was a valid and binding instrument, and the title to the lands conveyed on November 20, 1872, by the Pearl River Improvement and Navigation Company to be a good and valid title.

Mich Cen. R. R. Co. vs. Myrich, 107 U. S. 102.

In Hardy vs. Hartman, there had been an assessment of the lands to the Pearl River Improvement and Navigation Company and a sale thereof for the delinquent taxes due. Subsequent thereto, a second patent to these lands had issued from the State to Hartman. The Supreme Court of the State of Mississippi, in passing on the question presented as to which represented the valid title, said that the Act of 1871 provided that the Pearl River Improvement and Navigation Company should file with the Secretary of the State a bond with security in the sum of \$50,000.00, and that the same should be approved by the Governor. The Court then said that there was a bond in the record, filed in the office of the Secretary of the State and approved by the Governor; but it does not purport to be the bond of the company and can not be regarded as such. The Court then said that the proposition was too plain for argument; that if a patent issued to the land without these conditions being complied with, it was void.

The bond referred to in the Hardy case is the same bond set out in the opinion of the Circuit Court of Appeals in the case at bar. The Mississippi Court was not in any sense construing the statute. The Act of the Legislature of Mississippi creating the Pearl River Improvement and Navigation Company provided for the execution of a bond. An instrument purporting to be a bond was executed, filed and approved, as provided by statute. The question for determination was whether or not the instrument was a bond binding the company created by statute to perform the duties imposed upon it. A judicial construction of the instrument filed involved its interpretation in accordance with the general and commercial laws.

In *Davenport vs. Dodge County*, 105 U. S. 237, this Court said:

"A bond implies an obligor bound to do what it is agreed shall be done."

This fixed a definite rule of interpretation of an instrument under the general and commercial law. When the case of *Southern Pine Company vs. Hall* came before the Circuit Court of Appeals for consideration, that Court was not bound by the opinion in *Hardy vs. Hartman*, for the reason that as to all matters of general and commercial law, the United States courts exercise an independent judgment. In the exercise of that independent judgment, the Circuit Court of Appeals construed the instrument to be a bond in compliance with general and commercial laws. Being a bond, so judicially construed, the condition precedent to the passing of the title to the Pearl River Improvement and Navigation Company was complied with, and the patent became a valid and binding conveyance of the titles to said land.

THE HALL CASE BECAME A RULE OF PROPERTY

The decision of *Southern Pine Company vs. Hall*

established a rule of property. The Circuit Court of Appeals in the Hall case reviewed Hardy vs. Hartman, and used this language:

"This case, we think, can not be held a judicial construction of the statute on the point here involved. If it should be so considered, although we have great respect for the conclusion of that able and impartial court, we should be required, on the facts of this case, to exercise an independent judgment in the construction of the statute in question. The appellee in this case having acquired the rights herein asserted before the decision of the Supreme Court of Mississippi just cited, was rendered, she is entitled to invoke the independent judgment of this court as to the proper construction of the statute." Citing Burgess vs. Seligman, 107 U. S. 20.

See to the same effect:

Kuhn vs. Fairmount Coal Co., 215 U. S. 349.

It is to be observed by reference to the chain of title set out in the opinion in the Hall case and the chain of title pleaded by complainants herein, that the lands embraced in this case passed from the Pearl River Improvement and Navigation Company to Baldwin by the same deed; and passed from Baldwin to Israel Hall by the same deed and passed from Israel Hall to Olivia B. Hall by the same last will and testament. Whatever rights Olivia B. Hall had to the lands under consideration by the Circuit Court of Appeals in the Hall case, she had the same right under the same law and facts to the land under consideration in this case. If her title to the lands embraced in litigation in the Hall case was a good title, then her title to the lands embraced in this case was an equally good title. The decision of the Circuit Court of Appeals

in the Hall case became a rule of property as to all the lands vested in her by these conveyances.

This Court said in *Harris vs. Runnels*, 5 Howard 134:

"Acting under the opinion thus deliberately given by this Court, we can hardly be required by any comity or respect for the state courts to surrender our judgment to decisions since made in the state; and upon full consideration we have pronounced to be valid."

See also:

Pease vs. Peck, 18 Howard 595.

Anderson vs. Santa Anna, 116 U. S. 356.

Carroll County vs. Smith, 111 U. S. 556

Loeb vs. Trustees, 179 U. S. 449.

Since the decision in the Hall case the Supreme Court of the State of Mississippi decided the case of *Becker vs. the Columbia Bank*, 112 Mississippi 819, in which the Court said, that *Hardy vs. Hartman* had become a rule of property and would not be overruled. It further said that the bond required, according to the previous decisions of our Court, was not executed, and later in the case of *Trustees vs. Moore*, 97 Southern 552, in response to suggestion of error, the Court said that it was not concerned about the correctness of the decision in *Hardy vs. Hartman*; that that decision had become a rule of property and would not be departed from.

In deciding this case, the Circuit Court of Appeals said:

"We have, therefore, the question whether the rule of title to real property as decided by the Supreme Court of the State of Mississippi should be applied in this case, as

was done by the District Judge. We think that is the proper rule, and that there is no error in the decree."

The Circuit Court of Appeals based its decision upon *Jackson vs. Chew*, 12 **Wheat** 161, and *Suydam vs. Williamson*, 24 **Howard** 427. In the *Jackson* case the question was up before this Court for the construction of a will under the New York statutes. If the title conveyed by the instrument was defeasible by the devisee's dying without issue, in other words, if he took an estate-tail under the instrument controlled as it was by the New York law then his grantee's title failed upon his death without issue. The question had been settled by repeated decisions in the New York Court and had established a rule of property. This Court held that the rule of property established by the New York Courts under the New York statutes would be followed.

In the *Suydam* case, the question involved was the title under special acts of the New York Legislature. In *Williamson vs. Perry*, 8 **Howard** 495, this court had construed the statute in question. Subsequently the New York Court had placed different construction on the statute, thereby placing the title to the lands in different parties from those given the land in the *Perry* case. The validity of the title resting upon legislative enactment requiring a judicial construction of the acts of the Legislature placed the title solely within the purview of the construction given the act by the New York Court. This Court, in the *Suydam* case, readjusted its holding to conform to the interpretation given the statute of the State of New York by the highest court of that State.

The case at bar presents quite a distinct question from that presented in the *Suydam* case. The Circuit Court of Appeals said, in speaking of the construction of statutes:

"The construction of such statutes by the highest court of the State is binding upon the